

June 12, 2019

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PERB
1031 18th St
Sacramento, CA
95811
% PERB Board

RE: PUBLIC COMMENT PART 3

Dear PERB;

Please include my final comments on the proposed regulatory changes to PERB procedures.

In response to the comments by CALHR, we find the necessity for a “discovery type” process even more pressing and urgent. CALHR’s primary concern appears to be in hiding the truth in the factual allegations of each case behind the pretext of judicial economy.

This couldn’t be further from the truth. In addition to the proposed regulations there is no reason **why PERB could not require production of discovery from both parties 5 days before the settlement conference to be used by the mediator.** This would allow the mediator to have greater understanding of the facts in the case, and incentivize the parties to settle base on direct evidence and less on non substantial factors. As you know, once the process of the hearing begins the COMPLAINT issued generally is confined to the 4 corners of the document. The pre hearing and proposed pre settlement conference discovery can crystallize and aid whether or not charging party has the evidence to prove the COMPLAINT or not. This process would likely be more economical as opposed to more costly. If the institutional goal is for PERB to have less formal hearings than equity requires more access to evidence to make the hearing less necessary for both parties. However, bonafide Unfair Labor Practices can not be ignored for the sake of expediency. This would be contrary to the boards mandate.

I believe the concerns of the Board is to get the dispute” right” and create a more accurate and clean administrative record in case the matter is appealed to court of review. Therefore, we urge to be creative and aggressive on this issue of discovery.

Excerpts of comments by CalHR are below.

Sincerely,

Brian Crowell

EXCERPTS OF CALHR COMMENTS

“I. Proposed Changes to PERB Regulation 32150 (Pre-Hearing Discovery)

CalHR is concerned with the proposed changes to PERB Regulation 32150, and respectfully requests PERB reconsider and ultimately withdraw its proposed regulatory action. These changes constitute the creation of a new and expansive right to pre-hearing discovery in PERB administrative proceedings. Though seemingly well-intentioned, the creation of this new right will almost certainly undermine the interests of the Board and the parties it serves. As discussed further below, the proposed changes will likely exacerbate PERB’s existing backlog of cases, delay and impede the informal resolution of disputes, and impose significant financial burdens on state and local governments, as well as employee organizations.”

“A. The proposed changes incorporate judicial-type discovery procedures into PERB’s informal dispute resolution process.

Currently, PERB Regulation 32150 provides for production of documents and witness testimony at the commencement of the evidentiary hearing. The proposed changes to this regulation allow the parties to demand production of documents prior to the evidentiary hearing. According to the changes, PERB will now be able to issue “records subpoenas” for pre-hearing discovery that may be served on charging parties, respondents, and non-parties alike. These subpoenas are extremely broad and can require the “production of documents, electronically stored information, video records, audio records, or other records or things” (Cal. Code Regs, tit. 8, § 32150 subd. (b).) CalHR is concerned that these changes will effectively incorporate judicial-type discovery into every unfair labor practice proceeding before PERB.”